

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 26, 2025**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMIE T.,

Plaintiff,

v.

LELAND DUDEK, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No. 4:24-CV-05022-RHW

ORDER GRANTING IN PART  
PLAINTFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
CLOSING THE FILE

**ECF Nos. 7, 12**

**BEFORE THE COURT** is Plaintiff's Motion for Summary Judgment and the Commissioner's Brief in response. ECF Nos. 7, 12. Attorney Chad Hatfield represents Plaintiff; Special Assistant United States Attorneys David J. Burdett represents Defendant. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's motion, ECF No. 7, and **DENIES** Defendant's motion, ECF No. 12.

**JURISDICTION**

Plaintiff filed an application for Supplemental Security Income on July 6, 2017, alleging onset of disability beginning March 3, 2010. Tr. 15, 63-64, 442.

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Leland Dudek, Acting Commissioner of Social Security, is substituted as the named Defendant.

1 The application was denied initially and upon reconsideration. Tr. 88-94.  
2 Administrative Law Judge (ALJ) Mark Kim held a hearing on September 20, 2019,  
3 Tr. 32-62, and issued an unfavorable decision on December 26, 2019. Tr. 11-29.  
4 The Appeals Council denied Plaintiff's request for review on June 9, 2020. Tr. 1-  
5 6. Plaintiff filed an action in United States District Court on August 10, 2020. On  
6 March 28, 2022, this Court reversed and remanded the claim for further  
7 proceedings to reconsider each medical opinion in the record, reevaluate Plaintiff's  
8 testimony; and if Plaintiff was found disabled, to determine whether substance  
9 abuse was a material factor contributing to his disability. Tr. 488-500. On July 18,  
10 2022, the Appeals Council vacated ALJ Kim's 2019 decision and remanded the  
11 case to the ALJ for further proceedings consistent with the order of this Court.<sup>2</sup> Tr.  
12 508.

13 ALJ Kim held a remand hearing on November 14, 2023, Tr. 463-87, and  
14 issued an unfavorable decision on December 12, 2023. Tr. 439-62. The Appeals  
15 Council did not assume jurisdiction of the case, making ALJ Kim's December  
16 2023 decision the final decision of the Commissioner, which is appealable to the  
17 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial  
18 review on February 12, 2024. ECF No. 1.

### 19 STANDARD OF REVIEW

20 The ALJ is tasked with "determining credibility, resolving conflicts in  
21 medical testimony, and resolving ambiguities." *Andrews v. Shalala*, 53 F.3d 1035,  
22 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
23 \_\_\_\_\_

24 <sup>2</sup> The Appeals Council noted Plaintiff had filed a "subsequent claim for disability  
25 benefits on September 28, 2020, which was denied by hearing decision issued on  
26 April 19, 2022." Tr. 508. As discussed *infra*, evidence from Plaintiff's subsequent  
27 2020 claim, including medical expert testimony relevant to the period at issue here,  
28 is absent from the administrative record.

1 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
2 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
3 only if it is not supported by substantial evidence or if it is based on legal error.  
4 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
5 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
6 1098. Put another way, substantial evidence “is such relevant evidence as a  
7 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
8 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305  
9 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational  
10 interpretation, the Court may not substitute its judgment for that of the ALJ.  
11 *Tackett*, 180 F.3d at 1098; *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595,  
12 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or  
13 if conflicting evidence supports a finding of either disability or non-disability, the  
14 ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230  
15 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be  
16 set aside if the proper legal standards were not applied in weighing the evidence  
17 and making the decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d  
18 432, 433 (9th Cir. 1988).

### 19 SEQUENTIAL EVALUATION PROCESS

20 The Commissioner has established a five-step sequential evaluation process  
21 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
22 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant  
23 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
24 at 1098-1099. This burden is met once a claimant establishes that a physical or  
25 mental impairment prevents the claimant from engaging in past relevant work. 20  
26 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ  
27 proceeds to step five, and the burden shifts to the Commissioner to show (1) that  
28 Plaintiff can perform other substantial gainful activity and (2) that a significant

1 number of jobs exist in the national economy which Plaintiff can perform. *Kail v.*  
2 *Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir. 1984); *Beltran v. Astrue*, 700 F.3d  
3 386, 389 (9th Cir. 2012). If a claimant cannot make an adjustment to other work in  
4 the national economy, the claimant will be found disabled. 20 C.F.R. §  
5 416.920(a)(4)(v).

## 6 **STATEMENT OF FACTS**

7 The facts of the case are set forth in detail in the transcript of proceedings  
8 and the ALJ's decision and only briefly summarized here. Plaintiff was born in  
9 1992 and was and was 25 years old on the date the application was filed in 2017.  
10 Plaintiff completed 10th grade and has a limited work history. Tr. 456.

## 11 **ADMINISTRATIVE DECISION**

12 On December 12, 2023, the ALJ issued a decision finding Plaintiff was not  
13 disabled as defined in the Social Security Act. Tr. 442-57.

14 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
15 activity since the application date July 6, 2017. Tr. 444.

16 At step two, the ALJ determined Plaintiff had the following severe  
17 impairments: major depressive disorder; anxiety disorder; personality disorder;  
18 attention deficit hyperactivity disorder; and learning disorder. *Id.*

19 At step three, the ALJ found Plaintiff did not have an impairment or  
20 combination of impairments that met or medically equaled the severity of one of  
21 the listed impairments. Tr. 446.

22 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
23 he could perform a full range of work at all exertional levels, with the following  
24 nonexertional limitations:

25 [H]e can perform simple, routine, unskilled tasks with a Specific  
26 Vocational Preparation of 2 or less. He can perform work involving  
27 only simple decision making and only occasional and simple changes.  
28

1 He can perform work involving no interaction with the public and  
2 only occasional and superficial interaction with coworkers.

3 Tr. 450.

4 At step four, the ALJ found Plaintiff had no past relevant work. Tr. 455.

5 At step five, the ALJ found that, based on the testimony of the vocational  
6 expert, and considering Plaintiff's age, education, work experience, and RFC,  
7 Plaintiff could perform jobs that existed in significant numbers in the national  
8 economy, including the jobs of kitchen helper, laundry laborer, and linen room  
9 attendant. Tr. 456.

10 The ALJ thus concluded Plaintiff was not under a disability within the  
11 meaning of the Social Security Act since July 6, 2017, the date the application was  
12 filed. Tr. 457.

### 13 ISSUES

14 Plaintiff seeks judicial review of the Commissioner's final decision denying  
15 him disability insurance benefits under Title XVI of the Social Security Act. The  
16 question presented is whether substantial evidence supports the ALJ's decision  
17 denying benefits and, if so, whether that decision is based on proper legal  
18 standards. Plaintiff raises the following issues for review (1) whether the ALJ  
19 properly evaluated the medical opinion evidence; (2) whether the ALJ conducted a  
20 proper step two analysis; (3) whether the ALJ conducted a proper step three  
21 analysis; (4) whether the ALJ properly evaluated Plaintiff's symptom complaints;  
22 and (5) whether the ALJ conducted a proper step five analysis. ECF No. 7 at 5.

### 23 DISCUSSION

#### 24 A. Medical Opinions

25 Plaintiff contends the ALJ improperly evaluated the medical opinions of  
26 Plaintiff's medical providers. ECF No. 7 at 8-17.

27 For claims filed on or after March 27, 2017, the ALJ must consider and  
28 evaluate the persuasiveness of all medical opinions or prior administrative medical

1 findings from medical sources. 20 C.F.R. § 416.920c(a) and (b). The factors for  
2 evaluating the persuasiveness of medical opinions and prior administrative findings  
3 include supportability, consistency, the source's relationship with the claimant, any  
4 specialization of the source, and other factors (such as the source's familiarity with  
5 other evidence in the file or an understanding of Social Security's disability  
6 program). 20 C.F.R. § 416.920c(c)(1)-(5).

7 Supportability and consistency are the most important factors, and the ALJ  
8 must explain how both factors were considered. 20 C.F.R. § 416.920c(b)(2). The  
9 ALJ may explain how he considered the other factors, but is not required to do so,  
10 except in cases where two or more opinions are equally well-supported and  
11 consistent with the record. *Id.* Supportability and consistency are explained in the  
12 regulations:

13  
14 (1) *Supportability.* The more relevant the objective medical  
15 evidence and supporting explanations presented by a medical source  
16 are to support his or her medical opinion(s) or prior administrative  
17 medical finding(s), the more persuasive the medical opinions or prior  
18 administrative medical finding(s) will be.

19 (2) *Consistency.* The more consistent a medical opinion(s) or prior  
20 administrative medical finding(s) is with the evidence from other  
21 medical sources and nonmedical sources in the claim, the more  
22 persuasive the medical opinion(s) or prior administrative medical  
23 finding(s) will be.

24 20 C.F.R. § 416.920c(c)(1)-(2).

25 The Ninth Circuit addressed the issue of whether the 2017 regulatory  
26 framework displaced the longstanding case law requiring an ALJ to provide  
27 specific and legitimate reasons to reject an examining provider's opinion. *Woods*  
28 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new  
regulations eliminate any hierarchy of medical opinions, and the specific and

1 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the  
2 “relationship factors” remain relevant under the new regulations, and thus the ALJ  
3 can still consider the length and purpose of the treatment relationship, the  
4 frequency of examinations, the kinds and extent of examinations that the medical  
5 source has performed or ordered from specialists, and whether the medical source  
6 has examined the claimant or merely reviewed the claimant’s records. *Id.* at 790,  
7 792. Even under the 2017 regulations, an ALJ must provide an explanation  
8 supported by substantial evidence when rejecting an examining or treating doctor’s  
9 opinion as unsupported or inconsistent. *Id.* at 792.

10 Additionally, the law of the case doctrine applies in the Social Security  
11 context. *Stacy v. Colvin*, 825 F.3d 563, 567 (9th Cir. 2016). Under the law of the  
12 case doctrine, a court is precluded from revisiting issues which have been  
13 decided—either explicitly or implicitly—in a previous decision of the same court  
14 or a higher court. *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir.  
15 2012). The doctrine of the law of the case “is concerned primarily with efficiency,  
16 and should not be applied when the evidence on remand is substantially different,  
17 when the controlling law has changed, or when applying the doctrine would be  
18 unjust.” *Stacy*, 825 F.3d at 567 (citing *Merritt v. Mackey*, 932 F.2d 1317, 1320  
19 (9th Cir. 1991)). The rule of mandate is similar to, but broader than, the law of the  
20 case doctrine. The rule provides that any “district court that has received the  
21 mandate of an appellate court cannot vary or examine that mandate for any purpose  
22 other than executing it.” *Stacy*, 825 F.3d at 567-68. Further, in Social Security  
23 cases, when the Appeals Council remands a case to the ALJ, the ALJ must take  
24 any action ordered by the Appeals Council and must follow the specific  
25 instructions of the reviewing court. 20 C.F.R. § 416.1477; *Samples v. Colvin*, 103  
26 F. Supp. 3d 1227, 1231-32 (D. Or. 2015).

27 This Court previously determined ALJ Kim erred by improperly assessing  
28 the opinions of Dr. Marks, Dr. Morgan, and Dr. Burdge. Tr. 499. Upon remand,



1 the ALJ was ordered to reassess each of the medical opinions of record, to consider  
2 developing the record by directing Plaintiff to undergo an exam “preferably with a  
3 medical professional who specializes in individuals who have substance use  
4 disorders or dual diagnoses of substance use disorders and co-occurring mental  
5 disorders,” as consistent with Agency policy, and to reevaluate Plaintiff’s  
6 testimony, take into consideration any additional evidence presented, and, if  
7 necessary, determine whether Plaintiff’s mental impairments would disable him  
8 absent limitations resulting from drug and alcohol use. *Id.*

9       Upon remand, however, the ALJ failed to discuss Dr. Marks’s 2017 opinion,  
10 summarily dismissed the 2021 opinion of Plaintiff’s treating psychiatrist, Dr.  
11 Hashmi, and, as discussed *infra*, failed to adequately address an ALJ decision on  
12 Plaintiff’s subsequent application for benefits during the period at issue, including  
13 the medical expert testimony of Dr. Toews at a 2022 hearing. Tr. 442-57. The  
14 ALJ must consider and evaluate the persuasiveness of all medical opinions or prior  
15 administrative medical findings from medical sources. 20 C.F.R. § 416.920c(a)  
16 and (b). The ALJ is required to consider “all medical opinion evidence.”  
17 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ did not  
18 assess multiple medical opinions as required by the regulations and failed to follow  
19 the instructions of the Court to reconsider all medical opinion evidence in the  
20 record as well as reevaluate Plaintiff’s mental impairments in the context of any  
21 substance use disorder with the assistance of medical professional(s). This is  
22 reversible error.

23       Additionally, ALJ Kim was aware of the 2022 decision by ALJ Lori Freund  
24 on Plaintiff’s subsequent claim for benefits, which included the medical expert  
25 testimony of Dr. Toews. *See* Tr. 514-26. In that decision, ALJ Freund determined  
26 Plaintiff had several severe impairments, including schizoaffective disorder and  
27 substance use disorders, which ALJ Kim discounted at step two and did not further  
28 address. *See* Tr. 470-71, 508, 514-26. ALJ Freund’s decision covered at least two



1 and a half years during the period at issue in the present case and is based on the  
2 same records. ALJ Freund concluded that during that time, at least, Plaintiff met  
3 several Listings, but that Plaintiff's substance use was material between 2020 and  
4 2022. Tr. 514-26. This Court specifically ordered ALJ Kim to assess issues of  
5 mental health and substance use, but in contrast to his own 2019 decision as well  
6 as the 2022 decision of ALJ Freund, using the same records and with minimal  
7 discussion, ALJ Kim discounted evidence of schizoaffective disorder at step two  
8 and concluded any substance use disorder did not constitute a medically  
9 determinable impairment through the entire period at issue and did not address it.  
10 *See, e.g.*, Tr. 17, 21, 444-46, 499. This is insufficient. The ALJ has an  
11 independent duty to develop the record fully and fairly in order to make a fair  
12 determination as to disability, even where, as here, the claimant is represented by  
13 counsel. *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003); *see also*  
14 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001); *Crane v. Shalala*, 76  
15 F.3d 251, 255 (9th Cir. 1995). "Ambiguous evidence, or the ALJ's own finding  
16 that the record is inadequate to allow for proper evaluation of the evidence, triggers  
17 the ALJ's duty to 'conduct an appropriate inquiry.'" *See Tonapetyan*, 242 F.3d at  
18 1150 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)). The ALJ  
19 erred as he failed to develop the record to include relevant evidence from the  
20 subsequent claim or to properly assess evidence of Plaintiff's mental health  
21 impairments and substance use disorder(s) as previously ordered by this Court.

22 ALJ's Freund's decision was discussed by Plaintiff's representative and ALJ  
23 Kim at the 2023 remand hearing. Tr. 470-71, 514-26. The Appeals Council also  
24 noted Plaintiff's subsequent application and ALJ Freund's decision in its 2022  
25 order vacating ALJ Kim's prior decision and remanding this claim to him for  
26 further proceedings. Although ALJ Freund's 2022 decision is included in the  
27 record, the hearing transcript with medical expert testimony, as well as other  
28 relevant evidence, is not included in the current administrative record before this

1 Court. Neither party's briefing has explained these gaps in the record or even  
2 addressed the fact that there was a subsequent claim and ALJ decision with a DAA  
3 material finding. Regardless, there is relevant evidence missing, including medical  
4 expert testimony from a 2022 hearing. ALJ Kim erred by not developing the  
5 record to include such evidence.

6 Upon remand, the ALJ will develop the record, including evidence from  
7 Plaintiffs subsequent 2020 Title XVI claim. The ALJ is instructed to reassess all  
8 medical opinion evidence with the assistance of medical expert testimony. The  
9 ALJ will adopt the limitations in an opinion or provide reasons supported by  
10 substantial evidence to discount the opinion.

11 **B. Other issues**

12 Plaintiff contends the ALJ also erred by improperly rejecting Plaintiff's  
13 subjective complaints and failed to conduct an adequate analysis at step two, step  
14 three, and step five of the sequential analysis. ECF No. 7 at 17-22.

15 Having determined a remand is necessary to further develop the record and  
16 readdress the medical opinion evidence, the Court declines to reach these issues.  
17 *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because we remand the  
18 case to the ALJ for the reasons stated, we decline to reach [plaintiff's] alternative  
19 ground for remand."). Upon remand the ALJ will also reperform the sequential  
20 analysis with the assistance of medical and vocational expert testimony and  
21 perform a reassessment of Plaintiff's subjective symptom claims.

22 **CONCLUSION**

23 Having reviewed the record and the ALJ's findings, the Court finds the  
24 ALJ's decision is not supported by substantial evidence and not free of harmful  
25 error. Plaintiff argues the decision should be reversed and remanded for the  
26 payment of benefits. ECF No. 7 at 21-22. The Court has the discretion to remand  
27 the case for additional evidence and findings or to award benefits. *Smolen*, 80 F.3d  
28 at 1292. The Court may award benefits if the record is fully developed and further

1 administrative proceedings would serve no useful purpose. *Id.* Remand is  
2 appropriate when additional administrative proceedings could remedy defects.  
3 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). The Court will also not  
4 remand for immediate payment of benefits if “the record as a whole creates serious  
5 doubt that a claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021. The Court  
6 finds that further proceedings are necessary to develop the record with medical  
7 expert testimony and reconsider the evidence, including conflicting medical  
8 opinions.

9 On remand, the ALJ is instructed to obtain all updated medical evidence and  
10 determine whether any appeals remain pending on the 2022 decision by ALJ  
11 Freund or any other subsequent/additional claims. The ALJ will ensure all relevant  
12 evidence during the period at issue in this claim is exhibited in the administrative  
13 record. The ALJ will reperform the sequential analysis with the assistance of  
14 medical expert testimony, and will reassess all medical opinion evidence, utilizing  
15 the factors required, with the assistance of the medical expert to determine  
16 Plaintiff’s impairments, whether such impairments meet or equal a listing or are  
17 disabling, and if so, whether substance use is material for some or all of the period  
18 at issue. The ALJ will reconsider Plaintiff’s symptom claims as well as any other  
19 evidence or testimony relevant to Plaintiff’s disability claim.

20 Accordingly, **IT IS ORDERED:**

21 1. Plaintiff’s Motion, **ECF No. 7**, is **GRANTED** in part. The  
22 Commissioner’s decision is **REVERSED** and this matter is **REMANDED** for  
23 further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

24 2. Defendant’s Motion, **ECF No. 12**, is **DENIED**.

25 3. Upon proper presentation, the Court will consider Plaintiff’s application  
26 for fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

27 The District Court Executive is directed to update the docket sheet to reflect  
28 the substitution of Leland Dudek as Defendant, enter this Order, **ENTER**

1 **JUDGMENT** in favor of Plaintiff, forward copies to counsel, and **CLOSE THE**  
2 **FILE.**

3 DATED March 26, 2025.

4 s/Robert H. Whaley  
5 ROBERT H. WHALEY  
6 Senior United States District Judge  
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